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8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,

13 vs.

14 NICHOLAS LINDSEY,  
15 Defendant.

2:11-cr-00217-LDG-CWH

**DEFENDANT'S PROPOSED WIRE  
FRAUD JURY INSTRUCTIONS**

16 CERTIFICATION: This Request is timely filed.

17 COMES NOW the defendant, NICHOLAS LINDSEY, by and through his counsel of record,  
18 William Carrico, Assistant Federal Public Defender, hereby respectfully requests that the Court  
19 include the following stock jury instructions from the Ninth Circuit Manual of Model Jury  
20 Instructions, 2010 Edition.

21 DATED this 1<sup>st</sup> day of April, 2013.

22 RENE L. VALLADARES  
23 Federal Public Defender

24 /s/ William Carrico  
25 By \_\_\_\_\_  
WILLIAM CARRICO  
26 Assistant Federal Public Defender  
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**Wire Fraud—Scheme to Defraud or Obtain Money or Property by False Pretenses**

Nicholas Lindsey is charged in Counts One through Nine of the indictment with wire fraud in violation of section 1343 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly participated in a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;

Second, the statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, the decision of the decision making body to which they were addressed;

Third, the defendant acted with the intent to defraud; that is, the intent to deceive or cheat; and,

Fourth, the defendant used, or caused to be used, the mails to carry out or attempt to carry out an essential part of the scheme.

In determining whether a scheme to defraud exists, you may consider not only the defendant's words and statements, but also the circumstances in which they are used as a whole.

A wire is caused when one knows that the wires will be used in the ordinary course of business or when one can reasonably foresee such use. It does not matter whether the wire was itself false or deceptive so long as the wire was used as a part of the scheme, nor does it matter whether the scheme or plan was successful or that any money or property was obtained.

Adapted from Ninth Circuit Model Criminal Jury Instruction § 8.121 (2010); *Neder v. United States*, 527 U.S. 1, 16 (1999) (“In general, a false statement is material if it has ‘a natural tendency to influence, or [is] capable of influencing, the decision of the decision making body to which it was addressed.’”) (quoting *United States v. Gaudin*, 515 U.S. 506, 509 (1995) (other citation omitted); see also *United States v. Peterson*, 538 F.3d 1064, 1071 (9th Cir. 2008) (noting that “it would be preferable for district courts to use the definition of materiality approved by the Supreme Court in *Gaudin*”).

**CERTIFICATE OF ELECTRONIC SERVICE**

The undersigned hereby certifies that she is an employee of the Law Offices of the Federal Public Defender for the District of Nevada and is a person of such age and discretion as to be competent to serve papers.

That on April 1, 2013, she served an electronic copy of the above and foregoing **DEFENDANT'S PROPOSED WIRE FRAUD JURY INSTRUCTIONS**, by electronic service (CMECF) to the person named below:

DANIEL G. BOGDEN  
United States Attorney

CHRISTINA M. BROWN  
Assistant United States Attorney

BRIAN R. YOUNG  
Trial Attorney, Fraud Section, Criminal Division  
333 Las Vegas Blvd. So., Suite 5000  
Las Vegas, NV 89101

*/s/ Claudia V. Lopez*

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An Employee of the Federal Public Defender